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Proposed programme budget for the biennium 2018–2019

Administration of justice at the United Nations

Administration of justice at the United Nations and activities of the Office of the Ombudsman and Mediation Services

Twentieth report of the Advisory Committee on Administrative and Budgetary Questions on the proposed budget for the biennium 2018–2019

I. Introduction

1. The Advisory Committee on Administrative and Budgetary Questions has considered the reports of the Secretary-General on the administration of justice at the United Nations (A/72/204) and on the activities of the Office of the United Nations Ombudsman and Mediation Services (A/72/138). The Committee also had before it the report of the Internal Justice Council on the administration of justice at the United Nations (A/72/210). During its consideration of the reports, the Committee met with representatives of the Secretary-General, who provided additional information and clarification, concluding with written responses received on 6 October 2017.

2. The report of the Secretary-General on the administration of justice (A/72/204) provides information on the functioning of the formal system for the calendar year 2016 as well as caseload statistics and observations on the operation of the system. The report also responds to specific requests of the General Assembly contained in its resolution 71/266. The report on the activities of the Office of the United Nations Ombudsman and Mediation Services (A/72/138) provides information on the activities of the Office in 2016.

3. The present report contains the observations and comments of the Advisory Committee on the above reports of the Secretary-General. In section II, the Committee provides its recommendations on the administration of justice and on the responses of the Secretary-General to the requests of the General Assembly in resolution 71/266. Section III contains the recommendations of the Committee with regard to the Office of the United Nations Ombudsman and Mediation Services.

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II. Formal system of administration of justice at the United Nations

A. Caseload

4. In his report, the Secretary-General presents a review of the functioning of the formal system of administration of justice in 2016 (A/72/204, paras. 4–89). The report includes statistics pertaining to the latest caseload of the different entities within the system: the Management Evaluation Unit, the United Nations Dispute Tribunal, the United Nations Appeals Tribunal and the Office of Staff Legal Assistance. This information can be summarized as follows:

(a) The Management Evaluation Unit received 944 management evaluation requests in 2016 (compared with 873 in 2015), nearly 71 per cent of which came from staff serving in peacekeeping missions. This caseload included several group requests related to retrenchment exercises, salaries and benefits and entitlements;

(b) The United Nations Dispute Tribunal received 383 applications in 2016 (compared with 438 in 2015), and issued 221 judgments, 64 in Geneva, 107 in Nairobi and 50 in New York (compared with 126 in 2015). The Dispute Tribunal disposed of 401 applications (compared with 480 in 2015). The number of pending applications decreased from 275 in 2015 to 257 at the end of 2016;

(c) The United Nations Appeals Tribunal received 170 appeals (compared with 191 in 2015) and issued 101 judgments (compared with 114 in 2015). The number of pending appeals decreased from 147 in 2015 to 96 at the end of 2016. The number of interlocutory motions also decreased, from 81 in 2015 to 45 in 2016;

(d) The Office of Staff Legal Assistance received 1,756 new requests for legal advice (compared with 1,502 in 2015). The Office acted as counsel before the United Nations Dispute Tribunal in 71 cases (compared with 415 in 2015) and before the United Nations Appeals Tribunal in 322 cases (compared with 16 in 2015). According to the report, the fluctuation was mostly due to the submission of a group of 245 applications from former staff members of the International Tribunal for the Former Yugoslavia related to permanent appointments (see A/72/204, table 12 and para. 53).

5. **The Advisory Committee notes that the number of requests for the services of the Office of Staff Legal Assistance and the Management Evaluation Unit increased from 2015 to 2016, while the number of applications and appeals received by the Appeals and Dispute Tribunals decreased over the same period, together with the number of pending applications and appeals.**

B. Resource requirements for the biennium 2018–2019

Background

6. Pursuant to General Assembly 69/203, the Secretary-General appointed an Interim Independent Assessment Panel to conduct an assessment of the system of administration of justice that was introduced in 2009. Following the submission of the Panel's report (A/71/62/Rev.1), the Secretary-General issued his report on the findings and recommendations of the Panel (A/71/163), which included a proposal to establish 15 additional posts and to appoint three additional permanent judges to replace the ad item judges (see A/71/163, para. 158).

7. In its resolution 71/266, the General Assembly endorsed the conclusions and recommendations contained in the report of the Advisory Committee (A/71/436),

which, in the context of the consideration report of the Secretary-General and the proposed resource requirements associated with the report, did not consider that any case had been made for the immediate and exceptional consideration of additional funding for the system of administration of justice outside the cycle of the normal budget process (ibid., para. 4). In the same resolution, the Assembly decided to consider the issues related to the resource requirements for improving the functioning of the administration of justice system at its seventy-second session (resolution 71/266, para. 47).

8. At the time of its consideration of the proposed programme budget for the biennium 2018–2019, the Advisory Committee noted that the proposal did not include additional resource requirements for the administration of justice (see A/72/7, para. 20). In fact, the proposal reflected reductions primarily resulting from the discontinuation of non-recurrent resources for the three ad litem judges whose mandate was to expire on 31 December 2017 (A/72/6 (Sect.1), para. 1.173).

9. In his report on administration of justice, the Secretary-General proposes additional resource requirements amounting to $4,596,300 (net of staff assessment) (A/72/204, para. 172 (m)). The Advisory Committee notes that these requirements include requirements already proposed in his previous report on the administration of justice (A/71/163, paras. 151–155 and 158, and A/71/62/Rev.1), and which, in most cases, show little additional detail to support the requests for additional resources. **The Committee is therefore of the view that such requirements could have been included in the proposed programme budget for 2018–2019.**

10. The Secretary-General's proposal includes $3,946,900 under section 1, $272,400 under section 29A and $377,000 under section 29D, which is proposed to be charged against the contingency fund for the biennium 2018–2019 (A/72/204, para. 172 (m)). The supplementary information provided to the Advisory Committee indicates that the revised estimates for the administration of justice, inclusive of the above proposal, would then total $320,376,200 (net of staff assessment) for the biennium 2018–2019. The Committee notes that no additional resources are requested for the Office of the Ombudsman and Mediation Services (see also para. 35 below).

Staffing requirements

11. The supplementary information indicates that an amount of $2,506,600 is requested for the proposed establishment of 13 new posts (3 P-4, 5 P-3, 3 General Service (Other level) and 2 General Service (Local level)).

12. Four new posts are proposed to be established in the Office of Staff Legal Assistance, including three Legal Officers (P-4), and one Legal Assistant (1 General Service (Local level)), to be located in New York (1 P-4), Geneva (1 P-4) and Nairobi (1 P-4 and 1 General Service (Local level)). According to the Secretary-General, these posts would provide the level of expertise required for more complex cases and would improve the functioning of the Office. The Secretary-General's report indicates that presently, in view of the expiration of the experimental period of the voluntary supplemental funding mechanism on 31 December 2017, additional staff funded from this mechanism can be hired only on a temporary basis (see A/72/204, paras. 132–135).

13. The report also indicates that the contribution of the voluntary supplemental funding mechanism between April 2014 and June 2017 totalled $2,490,798, which represents an average monthly contribution of $63,866 (see A/72/204, annex IV). The Advisory Committee notes, however, that the report contains no details pertaining to the exploration of options for ensuring the sustainability of the mechanism.

14. **The Advisory Committee reiterates its view that the voluntary supplemental staff funding mechanism has provided sufficient funding to recruit a number of staff and encourages the Secretary-General to intensify his efforts to increase awareness of the usefulness of the mechanism. The Committee recommends that the General Assembly regularize the voluntary staff funding mechanism and also recommends that the Assembly request the Secretary-General to explore options to ensure the sustainability of the mechanism with a view to making proposals in his report on the administration of justice (see A/70/420, paras. 27 and 28 and A/71/436, para. 7).**

15. **Given the viability of the above mechanism to supplement the staffing resource requirements for the Office of Staff Legal Assistance, the Advisory Committee recommends against the establishment of four new posts in the Office. The Committee also recommends that updated information on staff contributions under the voluntary supplemental funding mechanism be provided to the General Assembly.**

16. **With regard to the need to provide an increased level of expertise for complex cases, the Advisory Committee noted in its previous report that two temporary positions of Legal Officer at the P-4 level funded by the voluntary supplemental funding mechanism were in the process of being filled (A/71/436, para. 8). The Committee notes that while the report of the Secretary-General makes reference to the increased caseload of the Office of Staff Legal Assistance, the Secretary-General's current request for additional Legal Officers at the P-4 level in the Office is mostly linked to the increased complexity of cases requiring a higher level of skill (A/72/204, para. 147). The Committee considers that a higher level of skill could be achieved without the necessity of establishing new posts.**

17. Two posts are proposed to be established in the Management Evaluation Unit: one Legal Officer and one Legal Assistant (1 P-3 and 1 General Service (Other level)), based on the consistently high volume of requests for management evaluation and the extensive consultations required for this process. The current staff complement of the Unit includes three P-4 Legal Officers (2 from the regular budget and 1 from the peacekeeping support account) as well as one P-5 and three General Service (Other level) posts. The Secretary-General's report indicates that from 2010 to 2016, the Unit received an average 930 requests per year. In view of this high number of requests, the timelines of 30 and 45 days applicable to the management evaluation process are extremely difficult to meet (A/72/204, paras. 129 and 130). The Advisory Committee notes from the statistical information provided that, despite these constraints, the management evaluation process prevents many cases from moving forward to litigation: of the 944 requests filed in 2016, 120 requests (or 13 per cent) had been challenged by staff members before the Dispute Tribunal by 31 March 2017 (ibid., para. 17). **Taking these observations into account, the Advisory Committee considers that the additional capacity in the Management Evaluation Unit is justified at this time. With regard to support staff, the Committee is of the view that the Unit can continue to operate with the present complement of three Legal Assistants. Consequently, the Committee recommends that the General Assembly approve resources for a Legal Officer (P-3) position under general temporary assistance and recommends against the establishment of a Legal Assistant (General Service (Other level)) post in the Management Evaluation Unit. Non-post resources should be adjusted accordingly.**

18. Six posts are proposed for establishment in the registry of the Dispute Tribunal in lieu of the corresponding number and levels of positions currently provided under general temporary assistance, including three Legal Officers (P-3) and three Legal

Assistants (2 General Service (Other level) and 1 General Service (Local level)), to be located in New York (1 P-3 and 1 General Service (Other level)), Geneva (1 P-3 and 1 General Service (Other level)) and Nairobi (1 P-3 and 1 General Service (Local level)). These posts would support the three new permanent judge positions, which are proposed to be established in lieu of the three existing ad litem judges. **Given that the Advisory Committee recommends against the establishment of three new permanent judges (see para. 22 below), it also recommends against establishing the six posts in the registries of the Dispute Tribunal and recommends instead that the existing temporary positions be extended for the period from 1 January to 31 December 2018.**

19. One new post of Legal Officer (P-3) is proposed to be established in the Registry of the United Nations Appeals Tribunal in New York to support the judges in view of the ongoing caseload. **Given that the caseload of the Appeals Tribunal shows a recent decline (see para. 4 (c) above), the Advisory Committee reiterates that it does not see any merit in the proposal to establish a new legal officer post in the registry of the Appeals Tribunal (see A/71/436, para. 11) and consequently recommends against the establishment of one Legal Officer (P-3) post in the Registry. Non-post resources should be adjusted accordingly.**

20. **Overall, with regard to the Secretary-General's proposal to establish 13 new posts for the administration of justice, the Advisory Committee recommends that the General Assembly approve one position of Legal Officer (P-3) in the Management Evaluation Unit, and recommends against the establishment of the other 12 proposed posts. Non-post resources should be adjusted accordingly.**

Non-post requirements

21. The proposed resources for non-post requirements amount to $2,089,700. Under non-staff compensation, requirements amounting to $1,557,100 would provide: (a) compensation for three full-time permanent judges of the Dispute Tribunal, in lieu of the existing three ad litem judges, one in New York, one in Geneva and one in Nairobi; (b) payments of interlocutory motions adjudicated by the judges of the Appeals Tribunal; and (c) the monthly stipend for the President of the Appeals Tribunal.

22. With regard to the proposal to replace the three ad litem judges with three permanent judges, the Advisory Committee notes that the caseload of the Dispute Tribunal appears to have stabilized, with a decline in the number of new applications from 2015 to 2016, as well as a decline in the number of pending applications from 2014 to the end of 2016 (see para. 4 above). The Committee also notes that the number of applications and judgments differ markedly between the three locations of the Dispute Tribunal (see A/72/204, tables 6 and 8). **The Committee reiterates that the possibility of reducing the number of judges in the future, or of redeploying them between duty stations, should be preserved (see A/71/436, para. 15). Accordingly, the Committee recommends against the replacement of the three ad litem judges with three permanent judges for the Dispute Tribunal and recommends the extension of the existing three ad litem judge positions for 12 months, from 1 January to 31 December 2018, as proposed as an alternative by the Secretary-General.**

23. With respect to the judges of the Appeals Tribunal, the Secretary-General proposes compensation of $600 be paid to them for each interlocutory motion (which is equivalent to the remuneration given to the non-drafting judges sitting on each appeal). The Secretary-General considers that judges should be remunerated for their adjudicative work, which is not confined to substantive appeals.

Interlocutory motions must be dealt with prior to adjudication on the merits (A/72/204, para. 137). In previous reports, the Secretary-General had already noted that ruling on procedural motions requires the judge to review the entire case file, a time-consuming process. Furthermore, much of this judicial work must be done between sessions in order to deal with interlocutory matters in a timely manner (see A/71/163, para. 140, A/70/187, paras. 70–73, and A/69/227). The information provided by the Secretary-General shows that, on average, there were 51 interlocutory motions per year between 2010 and 2016 (A/72/204, table 10).

24. With regard to the current remuneration of the appeals judges, the Advisory Committee was informed, upon enquiry, that they are paid honorariums for each appeal and that they usually dispose of appeals in panels of three judges (one presiding judge and two participating judges). The Appeals Tribunal typically holds three sessions per year, each for a duration of two weeks. In line with General Assembly resolution 63/253, the presiding judge in a case receives $2,400 in remuneration for each judgment and each participating judge receives $600 per judgment. Given the average caseload of 35 judgments per session and the set payment amounts, in 2015 and 2016 each judge of the Appeals Tribunal, including the President, has received, on average, between $15,000 and $20,000 per session. The present remuneration scheme only provides for the judicial work adjudicated during the sessions. In this regard, the Interim Independent Assessment Panel had noted in its report that most motions are filed when the Appeals Tribunal is not in session (A/71/62/Rev.1, para. 373).

25. **The Advisory Committee notes that the processing of interlocutory motions between the sessions of the Appeals Tribunal is needed for the proper functioning of the system of administration of justice and that the related work should therefore be compensated. Consequently, the Committee recommends that the General Assembly approve the proposed remuneration of $600 for each interlocutory motion adjudicated by a judge of the Appeals Tribunal, starting on 1 January 2018. The Committee also recommends that the Secretary-General continue to provide information on the workload of the judges and the related expenditures in future reports.**

26. The Secretary-General also proposes to pay the President of the Appeals Tribunal a monthly stipend of $1,500 for the administrative work required in connection with the Tribunal. **The Advisory Committee acknowledges, in this instance as well, that the proper functioning of the system of administrative of justice requires administrative work on the part of the President of the Appeals Tribunal and that this work should be compensated. Accordingly, the Committee recommends that the General Assembly approve payment of a stipend to the President of the Appeals Tribunal in the amount of $1,500 per month, starting on 1 January 2018.**

27. The non-post requirements also include an amount of $45,000 under experts to provide for the travel expenses of members of the Internal Justice Council, facilitators and speakers for a commemorative event to mark the tenth anniversary of the internal justice system at the United Nations. Upon enquiry, the Advisory Committee was informed that the commemorative event will take the form of a seminar and that the requested amount of $45,000 would cover the travel expenses of three members of the Internal Justice Council (who are not based in New York) and six external facilitators and speakers. In addition, amounts of $2,500 under hospitality and $2,500 under supplies and materials are requested to facilitate the event. **In the absence of detailed travel cost estimates, the Committee is not in a position to recommend approval of additional resources for this purpose. Should the Office wish to hold the commemorative event, its costs should be**

absorbed within existing resources. In this connection, the Committee would encourage the use of pro bono speakers and facilitators.

28. With regard to the actions requested by the Secretary-General to be taken by the General Assembly contained in his report (A/72/204, para. 172), **the Advisory Committee recommends that the Assembly:**

(a) **Approve resources for one Legal Officer (P-3) position under general temporary assistance in the Management Evaluation Unit;**

(b) **Regularize the voluntary supplemental funding mechanism for the Office of Staff Legal Assistance;**

(c) **Approve the extension of the three ad litem judges and the current incumbent judges for a period of 12 months, from 1 January to 31 December 2018;**

(d) **Approve the extension, for 2018, of the temporary staff currently supporting the three ad litem judges, consisting of three positions of Legal Officer (P-3), one each in Geneva, Nairobi and New York, two positions of Legal Assistant (General Service (Other level)), one each in Geneva and New York, and one position of Legal Assistant (General Service (Local level)) in Nairobi;**

(e) **Approve payment of $600 for each interlocutory motion adjudicated by a judge of the United Nations Appeals Tribunal starting on 1 January 2018;**

(f) **Approve payment of a stipend to the President of the United Nations Appeals Tribunal in the amount of $1,500 per month starting on 1 January 2018.**

III. Activities of the Office of the United Nations Ombudsman and Mediation Services

29. In his report on the activities of the Office of the United Nations Ombudsman and Mediation Services the Secretary-General indicates that the Office opened 2,633 cases in 2016 (2,026 from the Secretariat, 428 from the funds and programmes and 179 from the Office of the United Nations High Commissioner for Refugees representing a 10 per cent increase over the caseload for 2015 (A/72/138, para. 22). For the Secretariat, 53 percent of the cases were reported from peacekeeping missions, including political missions (ibid., para. 24). Reflecting a trend from previous years, the main issues were related to jobs and career (26 per cent of cases), evaluative relationships (23 per cent of cases) and compensation and benefits (16 per cent of cases).

30. The Advisory Committee was informed, upon enquiry, that in 2016 the Office dealt with 146 cases (approximately 7 per cent of the total number of cases) relating to pension and separation benefits, of which 80 cases originated from field missions. The Office facilitated efforts by stakeholders to create synergies and to ensure a flow of information between the Organization and the United Nations Joint Staff Pension Fund in a timely manner (see also the forthcoming report of the Advisory Committee on the Pension Fund).

31. The utilization rate of the services of the Office in the Secretariat (the relationship between the overall number of staff and the number of cases received) was almost 5.5 per cent in 2016 compared with 4.4 per cent in 2015. The rate was highest among internationally recruited staff (5.6 per cent). The utilization rate shows a steady and significant increase over the years (A/72/138, para. 39, and

figure XIV). The Advisory Committee was informed, upon enquiry, that the Office attributes this caseload trend to the following two possible factors: (a) staff and managers are becoming increasingly comfortable contacting the Office; and (b) the increasing number of cases may reflect a high level of frustration among staff owing to different factors, including concerns over various reform efforts and the downsizing of missions.

32. In terms of mediation activities, the Secretary-General indicates that the Office of the United Nations Ombudsman and Mediation Services opened 134 cases in 2016 compared with 87 cases in 2015. Of the 134 cases opened in 2016: 64 cases were mediated; 57 cases reached resolution; and 58 cases could not proceed to mediation because one of the parties declined to mediate. The resolution rate of the cases actually mediated by the Office was 89 per cent (see A/72/138, para. 53). According to the information provided to the Advisory Committee, a resolution rate of 80 per cent is the usual "industry target". **The Committee notes with satisfaction the high resolution rate of cases actually mediated and encourages the Office of the Ombudsman and Mediation Services to continue its efforts in informal dispute resolution.**

33. In its resolution 71/266, the General Assembly welcomed the analysis of the root causes of conflict included in the previous report of the Secretary-General on the activities of the Office of the United Nations Ombudsman and Mediation Services (A/71/157), stressed the importance of improving management performance and staff communications and urged the Secretary-General to address the systemic issues identified in the report in order to improve upon the policies and procedures of the Organization. In his present report, the Secretary-General summarizes the major systemic issues observed by the Office since its inception and highlights some of these issues under two headlines: performance management; and behaviour management and accountability (A/72/138, paras. 59–71). The Advisory Committee notes that information on the progress made in the implementation of the recommendations contained in the report of the Secretary-General on the activities of the Office of the United Nations Ombudsman and Mediation Services is annexed to the report of the Secretary-General on the administration of justice (see A/72/204, annex III). **The Committee considers that the report on the activities of the Office of the United Nations Ombudsman and Mediation Services should also provide information on actual policy changes resulting from the effort of the Ombudsman's Office to help resolve systemic issues.**

34. With respect to outreach, the report indicates that the Office conducted a total of 354 outreach activities in 2016, including 171 workshops, training sessions, information sessions and presentations, targeting over 4,000 staff, and that it held 170 meetings with senior officials and partnership consultations with internal and external stakeholder groups (A/72/138, para. 75). Upon enquiry, the Advisory Committee was informed that approximately 1,700 United Nations employees have participated in outreach activities organized by the Office between 2013 and 2016. **The Committee welcomes the outreach efforts undertaken by the Office of the United Nations Ombudsman and Mediation Services.**

35. Pursuant to paragraph 47 of resolution 71/266, in which the General Assembly decided that issues related to resource requirements for improving the functioning of administration of justice would be considered at its seventy-second session, the report provides information on strengthening resources for enhanced informal conflict resolution (A/72/138, paras. 109–112). The Advisory Committee notes that no formal proposal for additional resources to increase the activities of the Office of the United Nations Ombudsman and Mediation Services is included in the reports currently under consideration.

36. **The Advisory Committee reiterates the continued importance of the informal part of the system of administration of justice in taking early action to prevent or limit cases of litigation. The Committee recalls its previous observations that informal resolution is an important part of the system and continues to encourage efforts to increase its use when appropriate (A/71/436, para. 36).**